***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4340 of 2007

Date of decision: 27.8.2007

Jarnail Singh ...Petitioner

Versus

Amrik Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurnam Singh, Advocate for the petitioner.

****

RAJESH BINDAL, J.

Challenge in the present petition, is to the order dated June 15, 2007 passed by the Additional Civil Judge (Senior Division), Ferozepur rejecting the application for restoration filed by the petitioner in the suit, which was dismissed in default on January 20, 2004.

The claim made by the petitioner in the application for restoration was that hearing of the case was fixed for October 9, 2003 when it was adjourned to February 9, 2004 and thereafter to March 9, 2004. When on March 9, 2004 counsel for the petitioner-plaintiff appeared in the Court, he came to know that the above suit had already been dismissed in default on January 20, 2004. The application was contested by respondent raising the plea that same is barred by limitation and was not supported by an affidavit. It is further submitted by him that on October 9, 2003 the case was not adjourned to February 9, 2004 but was adjourned to November 13, 2003 and then to January 20, 2004. Still further it is submitted that story put by the petitioner-plaintiff is concocted as the same does not have any connection with the proceedings of the case. All what it is evident is that petitioner-plaintiff was not interested in pursuing his case. Learned trial Court dismissed the application filed by the petitioner by framing the issues and recording evidence.

***

The plea raised by the petitioner is that party should not be made to suffer on account of mistake either of clerk or counsel for the petitioner-plaintiff. Whatever dates were noted/conveyed by the clerk of the counsel, the same was taken as correct. The mistake is bonafide and there are sufficient reasons for restoration of the suit. In the evidence the petitioner-plaintiff had neither produced the photocopy of the brief nor his diary to prove that the assertion made by them in the application, about noting of various dates of hearing, was correct. In evidence, there is only statement that is of the petitioner-plaintiff. Evidence of the petitioner-plaintiff was belied during the cross-examination when he stated that he had been appearing on all the dates of hearings whereas in the application the plea raised was different.

Against this respondent had placed on record photo copy of brief and also diary to support his version to the effect that dates of hearing mentioned by the petitioner-plaintiff are imaginary and infact when case was fixed for hearing on January 20, 2004, no one had appeared on behalf of the petitioner, accordingly, the Court did not have any option but to dismiss the suit in default.

After considering the entire evidence produced on record, the trial Court did not find that the petitioner had been able to bring on record any cogent/convincing or reliable evidence to support his plea in the application for restoration of suit rather the story put by him was self-contradictory.

Learned counsel for the petitioner argued that even if there was fault on the part of the counsel or clerk, the party should not be made to suffer. He has relied upon judgment of this Court in **Hussan Lal Vs. Improvement Trust Tribunal, Jalandhar 1997(3) RCR (Civil) 43**. The judgment of this Court is not at all applicable in the facts and circumstances of the present case, where it was held that reference made under Section 18 of the Land Acquisition Act, 1894 cannot be dismissed in default. The facts in the present case are not similar to that case. The position of law as to whether a litigant is to suffer on account of negligence on the part of the

***

counsel is not of universal application. Facts of each case have to be considered on its own merits. Mere raising of plea is not sufficient. In the present case, in the facts and circumstances on record, it cannot be concluded that application moved by the petitioner-plaintiff was bonafide one as self-contradictory pleas were raised. No evidence was produced to prove the contention of wrong recording of date by the counsel.

Accordingly, I do not find any merit in the present petition and the same is dismissed.

August 27, 2007 **(Rajesh Bindal)**
Pka **Judge**